

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
ACCESSIBILITY CHECKLIST COMMITTEE
MEETING MINUTES**

April 12, 2010

1. CALL TO ORDER

Chair Luehrs called the meeting to order at approximately 10:05 a.m. at 2525 Natomas Park Drive, Suite 130, Sacramento, California.

ROLL CALL

Committee Members Present: Richard Luehrs – Chair (CCDA Commissioner)
Rocky Burks (CCDA Commissioner)
Michael Dean (CCDA Commissioner)
Jim McGowan (CBSC)
Rick Renfro (CALBO)

Committee Members Absent: Doug Hensel (HCD)
Dawn Anderson – Vice Chair (AIACC)
(Teleconference)
Mitchell Pomerantz (Teleconference) (CCDA
Commissioner)

Chair Luehrs thanked Vice Chair Anderson for chairing the last meeting in his absence.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no comments from the public on issues not on this agenda.

3. GENERAL BUSINESS ITEMS

Development of the Accessibility checklist (G.C. Section 8299.06)

Chair Luehrs asked about the 11B checklist. Committee Member Noble described it as an extensive document that covers 21 or 22 different topic sections. Vice Chair Anderson was going to pull it together for the checklist, arranging it in the building blocks format that the Access Board had developed for its new design standards.

Vice Chair Anderson expressed the need for the Committee to deliberate on what the tasks were, and break them out more specifically. She suggested breaking the checklist into smaller pieces and aligning it more closely with some of the lawsuits that have been filed. She felt that most of the lawsuits come from public exposure, and inspectors need a checklist that deals primarily with exterior spaces.

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Commissioner Pomerantz inquired about her definition of “exterior.” He was hesitant to emphasize one specific area, being mindful that the Committee’s charge was to provide a checklist for inspectors, so it should be as comprehensive as possible.

Vice Chair Anderson agreed, but felt that with the deadlines and the scope of the checklist, it may be necessary to hire an outside consultant or look at a different methodology in presenting the checklist.

Commissioner Pomerantz remarked that another option, in terms of methodology, would be to prioritize and focus on those areas that have engendered the most litigation. The Committee would then establish a timeline for completing the job. Vice Chair Anderson agreed.

Chair Luehrs suggested first breaking up “exterior spaces” into either parking or path of travel issues. Commissioner Pomerantz suggested concentrating on existing construction, since this was where many problems occur. It had a 20% allocation of hard cost for removing barriers.

Chair Luehrs asked the Committee to identify a deliverable to achieve by the next meeting. Vice Chair Anderson felt that the path of travel may be the number one priority for facilities. Commissioner Pomerantz commented that the City of Los Angeles uses the checklist put out by the Access Board, whose methodology for breaking up the components begins with the path of travel.

Committee Member McGowan stated that at the last meeting the Committee had assigned him and Committee Member Hensel to work on the checklist to address Chapter 11A. The proposed draft checklist takes the code sections and pulls out each individual aspect. Thought was given to the flow from outside the building property to the building itself; and then throughout the building.

Mr. McGowan noted that the likelihood of a building inspector carrying a thick checklist manual was questionable, whereas a checklist that’s abbreviated can cause the inspector at least to check the elements. A comprehensive checklist was going to be enormous. There was no mandatory requirement for building inspectors to use the checklist; so the Committee needed to develop it with the mindset that it be useful.

Chair Luehrs asked Committee members if they felt that the format of McGowan’s and Mr. Hensel’s draft could be expanded upon. He reminded them that the document put out by the Access Board was seven or eight pages long. Vice Chair Anderson commented that the document was basically a “how to” for getting through the regulations. Chair Luehrs described its format, which consisted of a list of the specific requirements with checkboxes. He agreed that it was limited in scope.

(At this point Committee Member Burks joined the meeting.)

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Commissioner Noble suggested using a checklist in which the 22 or so individual components are broken down and put into blocks. Depending on the architecture the inspector is looking at, he/she could pull that part of the checklist and look at the item. Commissioner Noble went on to suggest that the Committee borrow from the Division of State Architect (DSA) interpretations for the checklist. Committee Members McGowan and Pomerantz favored the idea of a pull-out format for its practicality.

Commissioner Burks noted that at the last meeting the Committee had discussed using, as a template, the DSA design that actually breaks out the depth of the various elements as to whether or not they are interior or exterior, then gets into specific details within that application. At that meeting he had expressed reservations about a pocket guide. Building inspectors have the responsibility to ensure compliance to California Building Code, Title 24. Some are having difficulty passing the Certified Access Specialist Program (CASP) examination. Committee Member Burks saw that as an upcoming problem for the checklist being developed, and wanted to start dealing with it now.

Committee Member Noble stated that the publication of the 2010 California Building Code in July 2010 for the most part will include the Commission's (California Building Standards Commission) efforts for ADA certification. He still felt that a comprehensive broken-out effort with 21 or 22 sections would work.

Committee Member Pomerantz said the general building inspectors in Los Angeles have a huge workload, and when they go out to do a building inspection, they aren't just looking for Title 24 compliance – they are looking at heating and air-conditioning, etc. Committee Member Burks agreed that building inspectors' huge workloads have been one of the problems resulting in non-compliance. But keeping the civil rights of people with disabilities in mind, the Committee should move forward to incorporate the standards that are identified in the DSA template.

Committee Member Noble stated that many building inspectors don't know what the administrative chapter says. It sends them to Government Code 4450 and the subsequent government codes or the civil codes. They don't know that there are other nexuses that are tied to the Title 24 Building Code, and that they have some fundamental responsibilities to ensure, through due diligence and standard of care, to avoid putting their jurisdictions into jeopardy.

Committee Member Noble remarked that at the last meeting, the Committee talked about viewing the July 1 date as a deadline for posting the draft checklist for public input. He thought that this would meet the provisions of the mandate. He suggested copying the 11B checklist, breaking it down into a document formatted for the Commission's purposes. 99% of the needed information was already there in that document.

Committee Member Noble stated that he wouldn't exclude plan reviewers. The Committee's checklist is purposed for its plan review staff, because that's where 90% of

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the work occurs. What happens in the field is a confirmation that the plan has been built correctly.

Vice Chair Anderson said she would like to see the California Department of Housing and Community Development (HCD) formalize their presentation so that the Committee could combine that material with the DSA checklist. This could give the Committee's document more clout.

Committee Member Noble commented that in the Access Compliance Reference Manual that Vice Chair Anderson was referring to, currently there was no housing component. If HCD and DSA wanted to work together, the Committee could certainly get a housing checklist as a part of its official comments.

Committee Member Burks felt that this would not be advisable. HCD deals with the private sector and DSA deals with the public sector. Rather than having HCD's checklist on DSA's website, a link to HCD's website would be better. People need to begin to understand the unique differences and nuances between public and private. There are some huge differences between the Housing Amendments Act and the ADA, and there are huge differences between Chapter 11A and 11B in terms of sites. He mentioned the differences between dormitories and multi-family housing.

Committee Member Noble stated that sometimes there are differences and sometimes not. For example, dormitories are used for both long-term living and transient living. There is almost, in a sense, a co-mingling of the two codes. Committee Member Burks noted that these nuances are what are getting people litigated.

Committee Member Noble replied that to look at accessibility from an architect's, engineer's or regulator's point of view, the California Access Reference Compliance Manual is a source that they turn to for robust information and confidence, more so than Part 2 of the California Building Code. It is where accessibility regulations belong, and although there are significant differences between residential and commercial, it still has a place in the reference manual.

Committee Member Burks responded that he would like to have HCD weigh-in to this level, as to who controls that document. He was okay with having DSA there, and the State Fire Marshal may want to weigh-in on certain issues as well. He was concerned that HCD had a member on the Committee who had not been able to make the meetings. HCD is a code-promulgating agency that needed to be participating.

Committee Member McGowan pointed out that at the last meeting, the Committee wanted to engage the Commission as well to discern what it expected out of the checklist. Then, with the due date of July 1, did that entail a finished product or a draft? He also noted that he had seen significant confusion about which document to use.

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Committee Member Burks was concerned that public funding versus private funding had real implications as to the code sections you incorporate. This Committee had a major responsibility to get clear and unambiguous definitions that let people understand the difference between the two. He also felt that the Committee needed some acknowledgment of its charge – that the checklist was not just for inspectors but also for designers.

Committee Member Noble commented that when you read SB 1608 in context, you can see a very strong angle towards public accommodations and public facilities. Housing can certainly be a component of the Committee's checklist. But the issue at hand is to deliver a checklist for building inspectors, plan reviewers, and designers on public buildings.

Committee Member Pomerantz suggested focusing strictly on the public accommodation side for the July 1 deadline. Meanwhile, the Committee can contact HCD. Commissioner Burks concurred that this could be viable. However, possibly Chair Luehrs and Vice Chair Anderson could contact Senator Corbett to discuss the Senator's intent for the checklist.

Committee Member Burks went on to say that it is critical for building inspectors and designers to know whether to use 11A or 11B. Chair Luehrs suggested offering up the DSA checklist to Senator Corbett for the July 1 deadline requirement, while specifying that the Committee is still in the process of folding in the 11A portion of it. This would meet the intent of the legislation identified in 8299.06.

Committee Member Pomerantz commented that if the Committee were going to use the DSA checklist, he didn't see a reason to request an extension. Committee Member Burks stated that the DSA checklist was not fully compliant – the Committee could use it as a template. The checklist would be a living document, changing in the future to achieve compliance.

Committee Member Pomerantz agreed with the phrase "living document." The Committee could preface the checklist by stating that there is every expectation that revisions will follow, just as Title 24 changes from time to time.

Vice Chair Anderson remarked that inspectors and designers become frustrated when regulations aren't communicated adequately by regulators. The HCD, to be a part of the move to accessibility, needed to participate in the discussion. She felt that the Committee needed to decide during the meeting how to handle 11A as part of the checklist, because it should definitely be included.

Committee Member McGowan noted that as Senator Corbett indicated that she is not available to attend the May 25 CCDA meeting, the Chair and Vice Chair should approach her. They could discuss the logistics of completing the checklist or issuing a draft. He also recommended that the Chair report to the Commission (CCDA), at the next meeting,

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that this Committee was having difficulty focusing itself on what the Commission wants. This Committee had been charged with a task, and needed to have something to show for its effort. Whether the checklist is to be complete; versus partial draft; versus completed draft, the Commission (CCDA) needs to know that the Committee believes housing to be an essential element.

Committee Member Burks reminded the members that this Commission (CCDA) was delayed in terms of its operational existence for over a year. The Committee had now been given a very narrow timeframe to address a massive effort that needs to be gotten right the first time.

Chair Luehrs, to deal with the public sector first, asked the Committee how comfortable they were with the DSA checklist. Committee Members Noble and Vice Chair Anderson answered that they were very comfortable. Committee Member Burks was very comfortable also, with the caveat that it did not meet standards in every segment. He requested a footnote or disclaimer stating this; that it's a living document that is not fully complaint yet. The reader needed to know that there are not adequate cross-references between DSA's Title 24 Code and the Americans with Disabilities Act Guidelines.

Vice Chair Anderson stated that the Committee had agreed that the checklist was to be a Title 24 document, used by inspectors only by Law Title 24. Committee Member Pomerantz agreed that the Committee's charge was in Title 24. Committee Member Burks assented, as long as the Committee made sure to send people the message clearly that the Committee was developing a document, and it wanted to move forward to create regulations and statute policies for requirements that get it right.

Committee Member Noble commented that the multi-family regulations apply, and are in the genre of accessibility. But with regard to the function of the Commission, they needed to encompass everything with regard to accessibility. The premise by which the Commission was founded is rooted in the statute – 8299 lays out the charge. The charge for housing would simply be a peripheral edition, because accessibility relates to housing. For the July deadline, the Committee should get a checklist together for public facilities and businesses. An extension isn't necessary; instead, add the housing information as the document evolves.

Chair Luehrs asked Committee Member Burks whether he would be comfortable with the DSA checklist as the Committee's checklist, if they could come up with a statement leading into it. Committee Member Burks replied that the Commission (CCDA) needed to come up with something. He stressed wanting the public to know that this was a beginning document, an initial effort that began to address the magnitude of disability compliance in California in a very narrow scope that was not yet fully federally compliant to the minimum standards.

Committee Member Burks wanted to begin a process in which other bodies weigh-in on the material: California Building Officials (CALBO), Americans with Disabilities Act

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(ADA), restaurants, hotels, and independent living and other disability organizations. The Commission (CCDA) itself was new and developing; its own webpage must be accessed through the California Building Standards Commission (CBSC) webpage. He confirmed that he wanted to use 11B's checklist, as it is phenomenal.

Committee Member McGowan noted that the Building Standards Commission was comfortable using the DSA document as the base document template for the development of the CCDA checklist. In addition, just for the record, there had been an agreement at the last meeting that Committee Member Noble would develop a disclaimer.

Committee Member Noble remarked that the DSA checklist had an initial statement that the document was not a substitute for actual approved regulation. DSA had gone through the document and found slight deviations from code, and fixed them.

Committee Member Burks outlined a possible timeline for developing the checklist. He then stated that the Executive Director of the CBSC, Mr. Walls, had made clear in past communications that HCD is a significant stakeholder in the Commission's work.

Committee Member Noble suggested issuing a master checklist on July 1 that would be a draft for review, not only for the Commission but also for the public. The disclaimer for the draft would say the Committee is working on a housing component that is not yet presented in this draft. Subsequent Commission meetings could go through the technical details on an agenda item. On a couple of the issues, discussion may take a couple of hours. Further, the checklist will need to be revised around January 2011 as the new code is published as proposed this July.

4. Future Committee Meetings

Committee Member Burks noted that there's some confusion about setting a beginning time for meetings and not an end time. Committee Member McGowan stated that under the Bagley-Keene Act, a committee can adjourn, but a member still needs to be present in the meeting room. However there is no requirement that a meeting has a scheduled ending time; it can end when business is finished.

5. Future Agenda Items

Chair Luehrs suggested that the Committee have a brief conversation about topics for the next meeting on May 25. Committee members discussed this, as well as work to be done individually in the interim.

Committee Member McGowan listed the upcoming work for the Committee members as follows.

- Committee Member Noble would work on the disclaimer.

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- Committee Members Hensel and McGowan would work on the development of the draft 11A checklist.
- Committee Members Renfro and McGowan would work with CALBO regarding building inspector focus group and “Beta” testing of the master checklist.
- Vice Chair Anderson and Committee Member Burks would work on the building blocks concept.
- Vice Chair Anderson and Committee Member Noble would work on the draft 11B checklist.

Committee Member Burks reminded everyone about the requirements under the Bagley-Keene Act regarding serial meetings.

Vice Chair Anderson cautioned everyone that until they hear from the Senator, they didn’t have a clear direction, and what they were presenting was conceptual. Committee Member Pomerantz pointed out that between then and the next meeting on the 23rd, there were 11 days during which they could be in contact with Senator Corbett to gain the necessary clarification.

Committee Member Noble reiterated that the Committee should produce a public accessibility checklist with the statement that it would come back with the 11A section complete. Committee Member Burks reemphasized the concern that people have a distinct misunderstanding between Chapters 11A and 11B. Often in the construction of 11A facilities, they violate the 11B requirements when they lease out the facility as a public accommodation.

Vice Chair Anderson wished to make some motions, but because she and Committee Member Pomerantz were present via teleconference they could not make motions or vote. Vice Chair Anderson then offered language for the Committee to consider.

1. Use 11B checklist without edit only to consider as a building block outline.
2. A preamble would be part of the building block and would address the federal regulations.
3. 11A was to be added at a future date, and HCD would review and authorize its content, and approve its use in the checklist.

MOTION: Committee Member Burks moved that this Committee recommend the adoption of the existing checklist of Chapter 11B, as the building block that may be rearranged to the Committee’s satisfaction but unedited. Committee Member Dean seconded.

More discussion ensued. Committee Member Noble pointed out that there may be some edits, as some information was specific to DSA’s interpretation. Vice Chair Anderson pointed out that the checklist needed to reflect Title 24 verbatim; it could not have interpretations. Committee Member Noble then noted that there would be a half dozen controversial issues; the Committee needed to highlight them.

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Committee Member Burks stated that this was the crux of what he had been saying today. He went on to note that the Commission needed to be careful that the purity of the code be maintained in the checklist – they couldn’t develop underground regulations.

Committee Member Noble remarked that some commentary guidance on the small number of controversial issues could take the form of sidebar text. For instance, when the Access Board revised their ADA Standards, they printed the new standards with sidebars adjacent that discussed the new standards.

Vice Chair Anderson pointed out that the interpretation of Title 24 would be up to the building official and jurisdiction. If they needed further clarification, they could call DSA. For now the Committee should concentrate on the regulation alone under the building blocks that it uses as an outline. Commentary would come later. Committee Member Noble added that it’s necessary to check with the local authority having jurisdiction to see what they require.

The motion was made again without the phrase “...but unedited,” as follows.

MOTION: Committee Member Burks moved that this Committee recommend the adoption of Chapter 11B, existing checklist as the building block that may be rearranged to the Committee’s satisfaction. Committee Member Dean seconded. Motion carried unanimously.

MOTION: Committee Member Burks moved that he and Committee Member Noble work on the discussion language, that, potentially, there shall be tentatively three sequential preambles to the checklist: one, being the initial draft, and two, the actual document that they have when it is submitted. And third, when they actually get the whole DSA and public housing elements that there would be actually three potential generations of preamble disclaimers. Committee Member McGowan seconded. Motion carried unanimously.

MOTION: Committee Member Burks moved that this Committee recommend to the full Commission (CCDA), upon the Chair and Vice-Chair having conversation with the author of SB1608 Senator Corbett, that they would move to incorporate the elements in the master checklist of Chapter 11A; and that they want to incorporate in a master checklist elements of 11A, Housing Community Development’s privately funded housing. Commissioner Dean seconded. Motion carried unanimously.

The Committee returned to discussion of the May 25 meeting agenda. It also discussed how to access the DSA checklist online, and future links for Committee Member McGowan to set up. At Committee Member Burks’ suggestion, the Committee agreed to stay after the full Commission meeting on June 17 for a follow-up Committee meeting.

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Committee Member Noble then suggested for the Committee to consider a smaller checklist for readily achievable barrier removal in existing buildings. The information had already been published by the Department of Justice, and could be copied word for word. The information was not really used by building officials because readily achievable barrier removal was not necessarily a code issue. Substantial amounts of litigation had taken place as a result of failure to meet federal standards. Having this additional checklist posted could be invaluable for California businesses.

Committee Member Burks requested having it on the web page as a link to the Department of Justice. At the June 17 Commission meeting, it could be added as an additional deliverable.

Committee Member Noble stated that he envisioned the Commission's website as an information center for the state. It encouraged much-needed outreach toward the goal of disability access.

6. ADJOURN

MOTION: Committee Member Burks moved that the Committee adjourn. One of the Committee Members (unidentified) present seconded. The meeting adjourned at approximately 1:30 p.m.